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6 **OCCIDENTAL COLLEGE**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

NOV 01 2012

ALAN CARLSON, Clerk of the Court

R. Simmer
BY R. SIMMER

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ORANGE - CENTRAL DIVISION**

11 **ORLY TAITZ,**

12 Plaintiff,

13 v.

14 **BARACK OBAMA, DIANE**
15 **FEINSTEIN, ELIZABETH EMKEN,**
16 **DAN HUGHES, RICK WILLIAMS, in**
their capacity as candidates on the ballot,
JOHN DOE, JANE DOE 1-100,

17 Defendants.

Case No. 30-2012-00582135

[Assigned to: Hon. Charles Marginis - Dept. C-19]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
EX PARTE APPLICATION OF
PLAINTIFF ORLY TAITZ FOR
MOTION TO COMPEL PRODUCTION
OF DOCUMENTS FROM THIRD
PARTY RESPONDENT OCCIDENTAL
COLLEGE; IN SUPPORT OF MOTION
TO QUASH SUBPOENA; AND IN
SUPPORT OF REQUEST FOR
SANCTIONS IN THE AMOUNT OF
\$4,000**

Date: November 1, 2012
Time: 1:30 p.m.
Dept: C-19

1 **I. PREFATORY STATEMENT**

2
3 Third-party respondent Occidental College files this opposition to Plaintiff's self-
4 styled *ex parte* 'Motion to Compel Production of Documents,' because the motion is
5 blatantly vexatious. Plaintiff has not served a proper subpoena – she has, in fact, failed to
6 comply with nearly every conceivable requirement for the issuance of a valid subpoena.
7 The subpoena seeks patently private and protected information; it purports to provide less
8 than a day's notice when at least twenty days are required; it was served via e-mail last
9 night; and it is not accompanied by the required Notice of Consumer Privacy Rights. Even
10 putting aside the truly staggering and wholesale defectiveness of the subpoena itself,
11 Plaintiff's attempt to obtain records and testimony from Occidental College via an *ex parte*
12 application on less than a day's notice is itself an abuse of process. To make the point even
13 clearer, Plaintiff's *ex parte* application was prepared and served even before she prepared
14 and served the subpoena itself – this must be close to a first.

15
16 Plaintiff, apparently a well-known and vexatious litigant, is plainly using this
17 litigation and this particular tactic to try to garner publicity, to smear the President of the
18 United States, a former student of Occidental College and to harass and bother the
19 President's former school. This Court should deny Plaintiff's "ex parte motion," quash the
20 subpoena itself, and award sanctions in the amount of \$4,000.

21
22 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

23
24 On or about July 9, 2012, Plaintiff filed this action, apparently purporting to
25 challenge under various provisions of the California *Elections Code* the results of the
26 primary election for United States Senate held on June 5, 2012. Despite her contention that
27 her role in the primary election of 2012 was as a candidate for Senate in the Republican
28 primary, Plaintiff alleges, among other things, that President Barack Obama may not and

1 cannot be certified as the winner in the State of California's Democratic primary election for
2 President, based on various, lengthy and rambling contentions regarding his citizenship and
3 eligibility. (See Affidavit of Elections Challenge Under Elections Code 16100, 16101,
4 16420-16421, filed on or about July 9, 2012, Par. 2 and Relief Requested, pp. 6-7).¹

5
6 Plaintiff's pleading purports to name President Barack Obama, Senator Diane
7 Feinstein, and three other individuals as nominal defendants. Third-party respondent
8 Occidental College is not a named defendant and has never been a named defendant in this
9 action. (Declaration of D. Jay Ritt ("Ritt Decl."), Par. 2).

10
11 Nonetheless, from the docket, it appears that Plaintiff has never properly served any
12 named defendant, and no defendant has appeared in this action. Thus, this action has never
13 at any point been at issue as to any named defendant at any time. At some point, it appears
14 Plaintiff dismissed her own action, removed it on her own initiative to federal district court,
15 where the district court then dismissed the case out of hand, and Plaintiff returned to this
16 Court. (Ritt Declaration, Par. 2).

17
18 On or about October 25, 2012, Plaintiff appeared in this Court seeking to enter
19 default against the unserved defendants in this action. There were no appearances for any
20 defendants. This Court denied Plaintiff's application for a default hearing due to improper
21 notice, holding that the defendants had not been validly served with any pleading of any sort
22 (including but not limited to the operative complaint or the request for default) and the Court
23 therefore lacked jurisdiction. (See Court's Minute Order of October 25, 2012 re: Ex Parte
24 Application – Other for Default; Ritt Decl., Par. 3.)

25
26
27 ¹ According to publicly available documents, Plaintiff was a losing candidate for the
28 Republican Senatorial position in the June 5, 2012 California primary election. President Barack
Obama was the prevailing candidate in the Democratic Presidential primary that same day. (See
Declaration of D. Jay Ritt "Ritt Decl.", Par. []).

1 Apparently, on or about October 29, 2012, Plaintiff then filed a lengthy *ex parte*
2 application seeking to obtain records from third-party Occidental College relating to
3 President Obama. The document is entitled "Motion to Compel Production of Documents
4 from a Third Party Witness Under California Code of Civil Procedure 2031.310," and seeks
5 to compel, among other things, that Occidental College produce the "student application by
6 candidate Barack Obama of his application and registration to Occidental College, located in
7 Los Angeles, California."² (Ritt Decl., Par. 4.)
8

9 As of October 29, 2012, Occidental has not been served with a subpoena duces
10 tecum; indeed, it appeared that no subpoena had even been prepared or served, nor had
11 Occidental received even an informal request for the records. Occidental had been provided
12 no notice of the hearing, nor a copy of any of the pleadings. Occidental had no knowledge
13 whatsoever of the dispute, the relief requested or the documents sought by Plaintiff. The
14 "motion" itself which was over 120 pages long with exhibits was not served upon
15 Occidental. (Ritt Decl., Par. 5.)
16

17 It appears from the Court's minute order of that date that, in addition to filing her "ex
18 parte" motion, Plaintiff also appeared in Court on October 29, 2012, as part of a scheduled
19 Status Conference and with regard to her *Ex Parte* Application, including, apparently, the
20 application relating to Occidental. The Court's minute order reflects that it was continuing
21 the Status Conference and Plaintiff's *Ex Parte* Applications to November 1, 2012, at 1:30
22 p.m., and that Plaintiff was to give notice. (Court's Minute Order of October 29, 2012 re:
23 Status Conference). (Ritt Decl., Par. 6.)
24

25 On or about October 30, 2012, Occidental's General Counsel, Carl A. Botterud,
26 received a copy of a purported *ex parte* application for a motion to compel production of
27

28 ² The "motion" also purported seek production of a video tape from the Los Angeles Times. This appears to be unrelated to the demand directed towards Occidental College.

1 documents pursuant to Cal. *Code of Civil Procedure* Section 2031.310. That motion was far
2 less voluminous than the 123 page opus filed on October 29, 2012, but appeared to be
3 similar in nature and sought similar relief. (Declaration of Carl A. Botterud ("Botterud
4 Decl."), Par. 2, Exh. A).

5
6 On October 31, 2012, after reviewing the *ex parte* application, Mr. Botterud spoke
7 with Plaintiff informing her of Occidental's intent to appear and oppose her application as
8 frivolous and unwarranted under law. Among the litany of procedural and substantive
9 defects with Plaintiff's application was the fact that Plaintiff had never bothered to serve an
10 actual subpoena on Occidental, a fact which Mr. Botterud pointed out to Plaintiff during
11 their discussion. Mr. Botterud informed Plaintiff that Occidental intended to ask the Court
12 for sanctions. Mr. Botterud confirmed their telephone conversation in an e-mail to which
13 Plaintiff later replied, a reply which unlawfully included President Obama's full social
14 security number (that has been redacted in this pleading). (Botterud Decl., Par. 3, Exh. B).

15
16 At 3:38 p.m. on October 31, 2012, Plaintiff emailed a purported subpoena duces
17 tecum, a copy of which is attached to Mr. Botterud's declaration as Exhibit C. The
18 subpoena purports to demand that Occidental designate a witness to appear for deposition at
19 the Court on November 1, 2012, and to produce "the college application, registration
20 financial aid records for Barack Hussein Obama aka Barry Obama aka Barry Soetoro, aka
21 Barry Soebarkah [sic]." The patently improper and non-sensical subpoena thus was served
22 on less than twenty four hours' notice, by e-mail and without any consumer privacy
23 protections. After receiving the "subpoena," Occidental's conclusion that Plaintiff's tactic is
24 sanctionable has only hardened. (Botterud Decl., Par. 3, Exh. C).

25
26 During their telephone conversation of October 31, 2012, Plaintiff told Mr. Botterud
27 that he was "committing treason" and being a "traitor" to his country in refusing to provide
28 the demanded information regarding President Obama. Plaintiff posted on her public

1 website her threat of criminal action against Mr. Botterud for “committing treason and
2 obstructing justice.” (Botterud Decl., Par. 4, Exh. D.)

3
4 At or about 7:00 p.m., Occidental College retained outside counsel who prepared
5 these papers, and intends to appear at the hearing scheduled for today at 1:30 p.m. Counsel
6 has spent approximately five hours reviewing documents, speaking with counsel and
7 drafting documents. Counsel anticipates spending another five to six hours traveling to
8 Court, and appearing at the hearing. At his regular rate of \$395 per hour, the total costs
9 incurred will easily exceed \$4,000. Accordingly, Occidental College will seek sanctions
10 from Plaintiff in that amount. (Ritt Decl., Par. 8).

11
12 **III. LEGAL ARGUMENT**

13
14 **A. Plaintiff Has Failed to Serve Occidental College with a Proper Subpoena,**
15 **Which Is a Prerequisite to Any Relief**

16
17 The first and self-evident defect with Plaintiff’s requested relief is that she has failed
18 to serve Occidental with a proper subpoena under the California Code of Civil Procedure.
19 As a third-party, Occidental may only be required to appear for deposition and to produce
20 documents upon the service of a timely and properly tailored subpoena duces tecum under
21 *California Code of Civil Procedure* Section 2020.020.

22
23 Any such subpoena requires at least twenty (20) days’ notice after issuance.
24 *California Code of Civil Procedure* Section 2020.510. The subpoena must be properly
25 served under the Code; mail service is not proper, it must be personally served. *California*
26 *Code of Civil Procedure* Section 2020.220(b).

1 To the extent the subpoena seeks the “personal records” of a defined “consumer,” the
2 subpoena must be accompanied by the consumer’s written release of the records or proof of
3 service of a special notice to the consumer under California *Code of Civil Procedure* Section
4 1985.3 that the records are being subpoenaed, in order to give the consumer the chance to
5 seek appropriate orders protecting the privacy of such records. California *Code of Civil*
6 *Procedure* Section 2020.510. “Personal records” under Section 1985.3 are defined to
7 include any data maintained by a private or public school or community college. California
8 *Code of Civil Procedure* Section 1985.3(a)(1).

9
10 Here, Plaintiff did not bother to draft or serve her subpoena until after she had filed
11 and served an *ex parte* application to compel production. The subpoena itself seeks
12 self-evidently private financial and academic records protected from disclosure; it is not
13 accompanied by any statutorily required Notice or release from the consumer; it was served
14 via e-mail and not personally; and it purports to give Occidental less than twenty-four (24)
15 hours’ notice.

16
17 The subpoena fails on its face at every conceivable level, and this Court should
18 exercise its discretion to quash the subpoena.

19
20 **B. Occidental College Is Entitled to Sanctions in Having to Respond to**
21 **Plaintiff’s Ex Parte Relief Compelling a Response to a Defective Subpoena**
22 **She Only Served after Preparing and Serving Her Bogus Ex Parte**
23 **Application**
24

25 It should go without saying that Plaintiff is not entitled to *ex parte* relief compelling
26 a response to a defective subpoena that was not even prepared until after the *ex parte*
27 application was prepared and served.
28

1 First, the subpoena itself, as demonstrated above, is facially defective at every level,
2 improperly served on October 31, 2012, via e-mail at the witching hour and perfectly timed
3 for Halloween. Second, even if the subpoena were proper, the remedy for a failure to
4 comply with a subpoena is a properly noticed motion under California *Code of Civil*
5 *Procedure* Section 1987.1.

6
7 Here, Plaintiff purports in her motion to be seeking relief based upon California *Code*
8 *of Civil Procedure* Section 2031.310, and she purports to be doing so on an *ex parte* basis.
9 Section 2031.310 applies to parties, not third-parties like Occidental, so that provision is a
10 non-starter. Moreover, seeking relief on an *ex parte* basis when remedies require a noticed
11 motion violates California Rule of Court 3.1200. So, even if Plaintiff had served a proper
12 subpoena upon Occidental College, even if that hypothetically proper subpoena was not
13 complied with by Occidental College and she was therefore entitled to compel relief, she is
14 not entitled to do so on an *ex parte* basis.

15
16 Section 1987.1 – the provision which Plaintiff should be following – allows the Court
17 to rule upon a motion to compel, and to quash service of the subpoena. Section 1987.2
18 allows the Court to award reasonable expenses and fees to the prevailing party in making
19 such a ruling.

20
21 For the reasons set forth above, Occidental College respectfully requests that the
22 Court deny Plaintiff's motion, quash the subpoena, and award sanctions in the amount of
23 \$4,000.

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1 **IV. CONCLUSION**

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3 For the foregoing reasons, Occidental College requests that this Court deny Plaintiff's
4 *ex parte* motion, quash her subpoena upon Occidental College, and issue an award of
5 sanctions in the amount of \$4000.
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7

8 DATED: November 1, 2012

Respectfully submitted,

9 RITT, TAL, THVEDT & HODGES
10 A Limited Liability Partnership
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13 D. JAY RITT
14 Attorney for Third-Party Respondent
15 OCCIDENTAL COLLEGE
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